

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ADVANCED MULTILEVEL CONCEPTS, ) Case Nos. 11-6679-SC  
INC. and ABLE DIRECT MARKETING, )  
Plaintiffs, ) ORDER GRANTING MOTION TO  
v. ) DISMISS, DENYING MOTION TO  
STALT, INC., HILLARD M. ) STRIKE, DENYING MOTION FOR  
STERLING, ESQ., FREEBORN & ) SANCTIONS, AND DENYING  
PETERS LLP, and DOES 1 through ) MOTION FOR PARTIAL JUDGMENT  
30, inclusive, ) ON THE PLEADINGS  
Defendants. )  
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**I. INTRODUCTION**

This case arises out of allegedly unlawful "stop orders" imposed upon shares of VitaminSpice held by Plaintiffs Advanced Multilevel Concepts ("Advanced") and Able Direct Marketing ("Able") (collectively, "Plaintiffs"). ECF No. 1 ("Compl."). Plaintiffs bring this action against Stalt, Inc. ("Stalt"), the Transfer Agent that allegedly imposed the stop orders; Hillard M. Sterling ("Sterling"), the attorney who allegedly counseled VitaminSpice to issue the stop orders; and Freeborn & Peters LLP ("Freeborn & Peters"), an Illinois law firm at which Sterling was a partner during the relevant period (collectively, "Defendants"). Stalt has filed an Answer denying most of the allegations in Plaintiffs'

1 Complaint. ECF No. 4 ("Answer").

2 Now before the Court are four motions. Sterling and Freeborn  
3 & Peters (the "Freeborn Defendants") move to dismiss and strike the  
4 Complaint and also move for Rule 11 Sanctions. ECF Nos. 27  
5 ("MTD"), 29 ("MTS") 50 ("Rule 11 Mot.").<sup>1</sup> Plaintiffs move for  
6 judgment on the pleadings against Stalt based on its Answer. ECF  
7 No. 34 ("MJP").<sup>2</sup> The Court finds these matters appropriate for  
8 disposition without oral argument. For the reasons set forth  
9 below, the Court GRANTS the Freeborn Defendants' motion to dismiss,  
10 and DENIES their motion to strike as moot. The Court also DENIES  
11 the Freeborn Defendants' motion for sanctions and Plaintiffs'  
12 motion for partial judgment on the pleadings.

13

14 **II. BACKGROUND**

15 This case concerns stop orders placed on Plaintiffs' shares of  
16 VitaminSpice. Plaintiffs are Wyoming corporations. Compl. ¶¶ 1-2.  
17 VitaminSpice is also a Wyoming corporation and has its principal  
18 place of business in Wayne, Pennsylvania. Compl. ¶ 6. The alleged  
19 wrongdoing begins with VitaminSpice's Chief Executive Officer  
20 ("CEO"), Edward Bukstel ("Bukstel"), who allegedly abused alcohol  
21 at work and mismanaged the company's accounting function. Id. ¶¶  
22 32-34. Bukstel's alleged improprieties were reported to  
23 VitaminSpice's board of directors by Jehu Hand ("Hand"), the  
24 company's bookkeeper and securities counsel. Id. ¶ 37. Bukstel

25  
26 <sup>1</sup> The Freeborn Defendants' motions to dismiss and strike are fully  
27 briefed. ECF Nos. 43 ("MTD Opp'n"), 46 ("MTD Reply"), 41 ("MTS  
Opp'n"), 47 ("MTS Reply"). Plaintiffs have yet to file an  
opposition to the motion for sanctions.

28 <sup>2</sup> Plaintiffs' motion for judgment on the pleadings is fully  
briefed. ECF Nos. 38 ("MJP Opp'n"), 40 ("MJP Reply").

1 allegedly retaliated in early July 2010 by terminating Hand and by  
2 ordering VitaminSpice's transfer agent, Stalt, to impose a stop  
3 order on the shares of Able, who had hired Hand as corporate  
4 counsel. Id. ¶¶ 38-39.

5 Stalt allegedly sent a letter to Able on July 12, 2010,  
6 stating that it had placed a stop order on Able's VitaminSpice  
7 shares "at the request of Vitamin Spice." Compl. Ex. A ("July 12  
8 Ltr."). The July 12 letter further states:

9  
10 Stalt, Inc. is treating this as an adverse claim. If  
11 [Able's common stock] certificate is properly presented  
12 for transfer[,] VitaminSpice will have 30 days to get a  
13 court order or bond in place. If Stalt, Inc. does not  
14 have written evidence of one of these within 30 days we  
15 will remove the Stop Order and effect the transfer of the  
16 above mentioned certificate as presented if the transfer  
17 request has not been withdrawn.

18 Id. In its Answer, Stalt states that the July 12 letter "speaks  
19 for itself" and that Stalt lacks "knowledge or information  
20 sufficient as to form a belief as to the truth or falsity of the  
21 allegations" concerning the issuance of the stop order. Answer ¶  
22 39.

23 Around August 24, 2010, Bukstel had second thoughts about the  
24 stop order on Able's shares. Id. ¶ 44. Soon thereafter, the  
25 Freeborn Defendants allegedly took actions to ensure that the stop  
26 order would remain in place. Sterling is admitted to the practice  
27 of law in Illinois and was a partner at Freeborn & Peters at the  
28 time the alleged misconduct occurred. Id. ¶ 13. Freeborn & Peters  
is a law firm with a principal place of business located in  
Chicago, Illinois. Id. at 3. Sterling allegedly advised  
VitaminSpice's board of directors to leave the Able stop order in  
place and expand its scope to include Advanced's shares of

1 VitaminSpice.<sup>3</sup> Id. ¶ 44-45.

2 Plaintiffs allege that Sterling also telephoned Stalt's CEO,  
3 Bill Senner ("Senner"), in California on October 5, 2010 and made  
4 "a series of slanderous allegations regarding fraud or other  
5 malfeasance purportedly surrounding Plaintiffs and the validity of  
6 their ownership claim over the Shares." Id. ¶ 52. Later that day,  
7 Senner sent an email to Bukstel stating: "I just spoke with Hillard  
8 Sterling. Although I didn't say much, he had some interesting  
9 information to say the least."<sup>4</sup> Compl. Ex. D.

10 On October 6, 2010, the VitaminSpice board of directors passed  
11 a resolution placing a stop order on Advanced's shares. Id. ¶ 55.  
12 The resolution stated: "[T]he Directors of the Corporation have  
13 been notified by Hillard Sterling, an attorney engaged in  
14 litigation against Jehu Hand . . . of potential irregularities with  
15 Shareholders represented by Jehu Hand." Id.

16 The next day, October 7, Stalt sent a letter to Advanced  
17 informing it that a stop order had been placed on Advanced's  
18 VitaminSpice shares at the request of VitaminSpice. Compl. ¶ 57,  
19 Ex. C ("Oct. 7 Ltr."). The October 7 letter is, in all relevant  
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21 <sup>3</sup> The Freeborn Defendants' alleged motivations for harming  
22 Plaintiffs are convoluted, though the Court reserves judgment on  
23 their plausibility. Plaintiffs allege that the lawyers were  
24 advancing the interests of one of their other clients, Keith A.  
25 Mazer ("Mazer"), who was engaged in litigation with Hand over a  
26 residential property in Antigua worth over one million dollars.  
27 Id. ¶ 17. Hand and Mazer are also allegedly embroiled in three  
other federal court proceedings. Id. Plaintiffs allege that  
"Sterling presumed that the damage [to Plaintiffs] would accrue to  
Hand by consequence . . . [;] it was his hope that . . . Mazer  
would thereby gain an advantage by way of an injured adversary with  
diminished resources to continue the litigation in which Mazer and  
Hand were . . . vigorously engaged." Id. ¶ 48.

28 <sup>4</sup> Plaintiffs allege that Sterling called Senner on October 6, 2010,  
Compl. ¶ 51, but the email attached to the Complaint indicates that  
the conversation took place on October 5, Compl. Ex. D.

1 respects, identical to the letter Stalt sent to Able on July 12.  
2 Compare July 12 Ltr. with Oct. 7 Ltr. In its Answer, Stalt  
3 "admits" Plaintiffs allegations regarding the October 7 letter.  
4 Answer ¶ 57.

5 Plaintiffs allege that they lost over \$2 million as a result  
6 of the stop orders because VitaminSpice's share price dropped  
7 precipitously while the stop orders were in place. Compl. ¶ 75.  
8 Plaintiffs explain that no broker will accept "stopped shares" for  
9 deposit because the marketability of those shares has been called  
10 into question. Id. ¶ 60. Thus, according to Plaintiffs, "a 30-day  
11 stop order amounts to a permanent block of sale." Id. Plaintiffs  
12 allege that, sometime after November 2010, Stalt temporarily  
13 refrained from reissuing the 30-day stop order "at every single  
14 step in the chain leading to sale." Id. ¶ 64. Pursuant to these  
15 concessions, Plaintiffs were able sell their shares and mitigate  
16 some of their damages. Id. ¶ 65.

17 On November 9, 2010, Plaintiffs filed an action against  
18 VitaminSpice, Bukstel, Stalt, and a number of other defendants in  
19 Orange County Superior Court. ECF No. 31 ("Defs.' RJD") Ex. A.  
20 The Superior Court dismissed the action without prejudice on venue  
21 and jurisdiction grounds. Compl. at 11, n.4. On June 8, 2011,  
22 Plaintiffs filed another suit against Bukstel and VitaminSpice in  
23 the United States District Court for the Eastern District of  
24 Pennsylvania (the "Pennsylvania Action"); Stalt and the Freeborn  
25 Defendants are not named in the action. Defs.' RJD Ex. B. The  
26 Pennsylvania Action was later transferred to bankruptcy court and  
27 was stayed when Hand filed an involuntary bankruptcy petition  
28 against VitaminSpice on August 5, 2011. Defs.' RJD Ex. C.

1 Plaintiffs filed the instant action on December 28, 2011  
2 against Stalt and the Freeborn Defendants. They assert two causes  
3 of action against Stalt: (1) breach of California Commercial Code  
4 ("the Commercial Code") §§ 8401, 8403(b) et seq.;<sup>5</sup> and (2)  
5 conversion. Plaintiffs' last three causes of action are directed  
6 against the Freeborn Defendants: (3) intentional interference with  
7 prospective economic advantage; (4) legal malpractice; and (5)  
8 libel. Plaintiffs pray for damages flowing from Defendants'  
9 alleged misconduct, as well as punitive and exemplary damages.  
10

11 **III. DISCUSSION**

12 **A. The Freeborn Defendants' Motion to Dismiss**

13 The Freeborn Defendants argue that Plaintiffs' claims against  
14 them should be dismissed under Federal Rule of Civil Procedure  
15 12(b)(2) because the court lacks personal jurisdiction. MTD at 8.  
16 The argument is predicated on the fact that Sterling is admitted to  
17 practice law in Illinois and Freeborn & Peters' principal place of  
18 business is located in Chicago, Illinois. Compl. ¶¶ 13-14.  
19 Plaintiffs respond that the exercise of general jurisdiction is  
20 appropriate in light of the Freeborn Defendants' contacts with  
21 California, or, alternatively, specific jurisdiction is appropriate  
22 because Plaintiffs' claims arise out of Sterling's phone call to  
23 Stalt in California. MTD Opp'n at 5-7. The Court finds  
24 Plaintiffs' arguments unavailing and concludes that it lacks  
25 jurisdiction to hear their claims against the Freeborn Defendants.  
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27 <sup>5</sup> Plaintiffs' first cause of action is styled as "Breach of Uniform  
28 Commercial Code" ("UCC"). Compl. at 14. California has adopted  
the UCC as part of the California Commercial Code. For the sake of  
clarity, the Court refers to the codified California code sections  
rather than the UCC.

1                   1. General Jurisdiction

2                   General jurisdiction exists where the defendant engages in  
3 "continuous and systematic general business contacts that  
4 approximate physical presence in the forum state. This is an  
5 exacting standard, as it should be, because a finding of general  
6 jurisdiction permits a defendant to be haled into court in the  
7 forum state to answer for any of its activities anywhere in the  
8 world." Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 801  
9 (9th Cir. 2004) (internal quotations and citations omitted).

10                  Plaintiffs argue that general jurisdiction is appropriate  
11 because Sterling has successfully applied to appear pro hac vice  
12 before the United States District Court for the Central District of  
13 California in three separate cases since October 2009. MTD Opp'n  
14 at 5-6 (citing ECF No. 44 ("Pls.' RJN") Ex. A). Plaintiffs  
15 represent that these pro hac vice appearances include approximately  
16 six visits to California for the purposes of mediation, conducting  
17 depositions, and other trial machinations. Id. at 6. This  
18 argument lacks merit. Pro hac vice status is inherently temporary,  
19 and six visits to California hardly approximates a physical  
20 presence in the state. Further, it appears that many of Sterling's  
21 pro hac vice appearances occurred after he left Freeborn & Peters  
22 and, therefore, have no bearing on Freeborn & Peters' contacts with  
23 California. See Calder v. Jones, 465 U.S. 783, 790 (1984) ("[E]ach  
24 defendant's contacts with the forum State must be assessed  
25 individually.").

26                  Plaintiffs further argue that California Rule of Court 9.40(f)  
27 requires that the Court exercise personal jurisdiction. MTD Opp'n  
28 at 7. Rule 9.40(f) provides, in relevant part:

1 A person permitted to appear as counsel pro hac vice . . .  
2 is subject to the jurisdiction of the courts of this  
3 state with respect to the law of this state governing the  
4 conduct of attorneys to the same extent as a member of  
5 the State Bar of California. The counsel pro hac vice  
6 must familiarize himself or herself and comply with the  
7 standards of professional conduct required of members of  
8 the State Bar of California and will be subject to the  
9 disciplinary jurisdiction of the State Bar with respect  
10 to any of his or her acts occurring in the course of such  
11 appearance.

12 Cal. Rule of Ct. 9.40(f). In other words, under Rule 9.40, an out-  
13 of-state attorney is subject to jurisdiction in California for  
14 charges of professional misconduct arising out of his or her pro  
15 hac vice appearance in the state. Contrary to Plaintiffs'  
16 assertions, the rule does not provide that a pro hac vice  
17 appearance subjects an attorney to jurisdiction in California for  
18 claims unrelated to that appearance. Since Plaintiffs' claims are  
19 not connected to Sterling's pro hac vice appearances in California,  
20 these appearances cannot support the exercise of jurisdiction here.

21 Plaintiffs also argue that Sterling has the requisite minimum  
22 contacts with California since he left Freeborn & Peters to join  
23 Lewis Brisbois Bisgaard & Smith ("Lewis Brisbois"), a multi-state  
24 law firm with offices in San Francisco, San Diego, San Bernadino,  
Costa Mesa, and Los Angeles. MTD Opp'n at 6. Plaintiffs point out  
that Sterling has recently filed documents with the Central  
District of California and that these documents provide the Costa  
Mesa address of Lewis Brisbois as Sterling's business address. Id.  
(citing Pls.' RJD Exs. C, D).

25 These facts are unpersuasive as they fail to show that  
26 Sterling has "continuous and systematic" contacts with the forum.  
27 Missing from Plaintiff's evidence is any indication that Sterling  
28 regularly works out of Lewis Brisbois's offices in California, as

1 opposed to its offices in other states. Sterling's filings with  
2 the Central District of California do not support Plaintiffs'  
3 position. Indeed, they tend to undermine it. The signature line  
4 on one of these filings lists Sterling's address as Chicago,  
5 Illinois. Pls.' RJD Ex. C at 5. Attached to the other filing is a  
6 proof of service executed in Chicago. Pls.' RJD Ex. D at 8. Both  
7 documents indicate that Sterling was appearing pro hac vice and was  
8 working with other Lewis Brisbois attorneys who are admitted to  
9 practice law in California. See Pls.' RJD Exs. C, D. It is  
10 logical to assume that the Costa Mesa address listed in these  
11 documents belongs to Lewis Brisbois's California attorneys, not to  
12 Sterling. Taken together, these facts tend to support jurisdiction  
13 in Illinois, not California.

14 For these reasons, the Court concludes that the Freeborn  
15 Defendants lack the minimum contacts with California necessary to  
16 support the exercise of general jurisdiction.

17 2. Specific Jurisdiction

18 The Ninth Circuit has enunciated a three-prong test for  
19 analyzing a claim of specific jurisdiction:

20 (1) The non-resident defendant must purposefully direct  
21 his activities or consummate some transaction with the  
22 forum or resident thereof; or perform some act by which  
23 he purposefully avails himself of the privilege of  
conducting activities in the forum, thereby invoking the  
benefits and protections of its laws;

24 (2) the claim must be one which arises out of or relates  
to the defendant's forum-related activities; and

25 (3) the exercise of jurisdiction must comport with fair  
play and substantial justice, i.e. it must be reasonable.

26  
27 Schwarzenegger, 374 F.3d at 802. The first prong is often referred  
28 to as "the purposeful availment prong." "If the plaintiff succeeds

1 in satisfying both of the first two prongs, the burden then shifts  
2 to the defendant to 'present a compelling case' that the exercise  
3 of jurisdiction would not be reasonable." Id.

4 "[A] foreign act that is both aimed at and has effect in the  
5 forum state satisfies the purposeful availment prong of the  
6 specific jurisdiction analysis." Bancroft & Masters, Inc. v.  
7 Augusta Nat'l Inc., 223 F.3d 1082, 1087 (9th Cir. 2000). For  
8 example, in Calder, a California plaintiff sued a national magazine  
9 and other defendants for an allegedly defamatory article that had  
10 been written and edited in Florida. 465 U.S. at 785. The Supreme  
11 Court upheld the exercise of personal jurisdiction in California,  
12 even though the defendants had few contacts with the state. Id. at  
13 789-90. The court reasoned that the defendants' actions "were  
14 expressly aimed at California" and "[the defendants] knew that the  
15 brunt of th[e] injury would be felt by [the plaintiff] in the  
16 State." Id.

17 The Ninth Circuit construes Calder to impose three  
18 requirements: "the defendant allegedly [must] have (1) committed an  
19 intentional act, (2) expressly aimed at the forum state, (3)  
20 causing harm that the defendant knows is likely to be suffered in  
21 the forum state." Yahoo! Inc. v. La Ligue Contre Le Racisme Et  
22 L'Antisemitisme, 433 F.3d 1199, 1206 (9th Cir. 2006) (quoting  
23 Schwarzenegger, 374 F.3d at 803). As to the third requirement,  
24 "the 'brunt' of the harm need not be suffered in the forum state."  
25 Id. at 1207. "If a jurisdictionally sufficient amount of harm is  
26 suffered in the forum state, it does not matter that even more harm  
27 might have been suffered in another state." Id.

28 Here, Plaintiffs' argument for the exercise of specific

1 jurisdiction is predicated on Sterling's October 5 telephone call  
2 with Senner, Stalt's CEO, who was located in California at the  
3 time. MTD Opp'n at 7-8. Plaintiffs insist that it is plausible  
4 that: (1) Sterling initiated the call, (2) Sterling advised Stalt  
5 regarding potential irregularities in Plaintiffs' VitaminSpice  
6 shares, and (3) this call was the proximate cause of the stop order  
7 issued by Stalt the following day. Id. at 8.

8 Even if the Court were to draw these inferences, the exercise  
9 of specific jurisdiction would be inappropriate since there is no  
10 indication that Plaintiffs suffered any harm in California or that  
11 Sterling's actions were aimed at California. Plaintiffs are  
12 Wyoming corporations with no apparent connections to California.  
13 Compl. ¶¶ 1-2. Accordingly, Sterling's telephone call with Senner  
14 and the stop orders that allegedly resulted from that call could  
15 not have injured Plaintiffs in California.

16 The Ninth Circuit's decision in Metropolitan Life Insurance  
17 Co. v. Neaves, 912 F.3d 1062 (9th Cir. 1990), is instructive. The  
18 defendant, an Alabama resident, mailed fraudulent information to an  
19 insurer in order to claim life insurance policy benefits to which  
20 she was not entitled, ultimately reducing the share of benefits  
21 distributed to another beneficiary who resided in California. 912  
22 F.3d at 1063. The defendant argued California courts lacked  
23 jurisdiction, urging the Ninth Circuit "to focus only on her  
24 conduct in mailing the fraudulent information, contending that it  
25 was 'only fortuitous' that the mailing was directed to California  
26 as opposed to, for example, [the insurer's] headquarters in New  
27 York." Id. at 1065. The Court found that it was irrelevant where  
28 the letter was sent; the critical inquiry was where the impact of

1 the fraud took place. Id. Likewise, here, Plaintiffs focus on  
2 where Sterling's phone call was directed but do not address where  
3 the harm was sustained.

4 For the reasons set forth above, the Court declines to  
5 exercise specific or general jurisdiction over the Freeborn  
6 Defendants. Accordingly, the Court DISMISSES WITHOUT PREJUDICE  
7 Plaintiffs' claims against the Freeborn Defendants. As the Court  
8 lacks jurisdiction to address the merits of Plaintiffs' claims, it  
9 DENIES the Freeborn Defendants' motion to strike.

10 **B. The Freeborn Defendants' Motion for Rule 11 Sanctions**

11 Plaintiffs have yet to file an opposition to the Freeborn  
12 Defendants' motion for Rule 11 sanctions. Nevertheless, having  
13 reviewed the moving papers, the Court can discern no convincing  
14 reason to grant the motion.

15 Since the Court lacks subject matter jurisdiction, it is  
16 hesitant to rule on the merits of Plaintiffs' claims against the  
17 Freeborn Defendants, let alone find that those claims are  
18 frivolous. Further, the motion lacks merit. The Freeborn  
19 Defendants essentially argue that Plaintiffs' claims must be  
20 frivolous because they fail as a matter of law. But that is not  
21 how Rule 11 works. "The key question in assessing frivolousness is  
22 whether a complaint states an arguable claim -- not whether the  
23 pleader is correct in his perception of the law." Hudson v. Moore  
24 Bus. Forms, Inc., 836 F.2d 1156, 1159 (9th Cir. 1987). The Court  
25 concludes that the Complaint, at the very least, states an arguable  
26 claim.

27 The Freeborn Defendants also argue that Plaintiffs' claims  
28 were filed for an improper purpose. Specifically, they state that:

1 [T]he history between Plaintiffs' corporate attorney,  
2 Jehu Hand, and the Freeborn Defendants suggests that  
3 Plaintiffs have filed their Complaint in this action in  
4 an effort to drive a wedge between attorney Sterling and  
5 Mr. Mazer and in retaliation for the Freeborn defendants'  
6 zealous representation [of] Mr. Mazer in three unrelated  
7 actions involving Mr. Hand . . . . Additionally, the  
8 history between VitaminSpice, Plaintiffs[,] and Mr. Hand  
9 suggest that this Complaint was filed in an attempt to  
10 drive a wedge between Mr. Sterling and VitaminSpice . . .  
11 .

12 Sanctions Mot. at 15-16. Plaintiffs have leveled similar  
13 allegations against the Freeborn Defendants, claiming that they  
14 counseled VitaminSpice to impose the stop orders so that Mazer  
15 could gain an advantage over Hand in the separately filed actions.  
16 Compl. ¶ 17. The Court suspects that Plaintiffs would assert that  
17 this sanctions motion was filed for that same improper purpose.  
18 The Court declines to involve itself in such feuds. It also  
19 declines to conclude that Plaintiffs filed this action for an  
20 improper purpose. The Freeborn Defendants would have the Court  
conclude that Plaintiffs sued them to harm or settle a score with  
Mazer. A more plausible inference is that Plaintiffs filed this  
action to recover for damages they suffered as a result of the  
Freeborn Defendants' allegedly illicit conduct -- a perfectly  
proper purpose.

21 For these reasons, the Court DENIES the Freeborn Defendants'  
22 motion for sanctions.

23 **C. Plaintiffs' Motion for Judgment on the Pleadings**

24 Plaintiffs move for partial judgment on the pleadings against  
25 Stalt as to its liability on Plaintiffs' first cause of action for  
26 breach of Division 8 of the Commercial Code.<sup>6</sup> The crux of  
27 Plaintiffs' motion is that Division 8 provides that only the

28 <sup>6</sup> Plaintiffs also pray for a hearing to determine the amount of  
damages. MJP at 5.

1 registered owner of a stock certificate may lawfully instruct a  
2 transfer agent to impose a stop order. MJP at 7. Accordingly,  
3 Plaintiffs argue that VitaminSpice lacked legal authority to  
4 instruct Stalt to issue the stop order on Plaintiffs' shares. Id.  
5 Plaintiffs further argue that Stalt, as a transfer agent, may be  
6 held liable for damages arising from the unauthorized stop orders  
7 under Section 8407 of the Commercial Code. Id.

8 The legal standard for evaluating a motion for judgment on the  
9 pleadings is well-settled. "Judgment on the pleadings is proper  
10 when the moving party clearly establishes on the face of the  
11 pleadings that no material issue of fact remains to be resolved and  
12 that it is entitled to judgment as a matter of law." Hal Roach  
13 Studios, Inc. v. Feiner & Co., Inc., 896 F.2d 1542, 1550 (9th Cir.  
14 1989). "All allegations of fact by the party opposing the motion  
15 are accepted as true, and are construed in the light most favorable  
16 to that party." Gen. Conference Corp. of Seventh-Day Adventists v.  
17 Seventh-Day Adventist Congregational Church, 887 F.2d 228, 230 (9th  
18 Cir. 1989). Thus, "a plaintiff is not entitled to judgment on the  
19 pleadings when the answer raises issues of fact that, if proved,  
20 would defeat recovery." Id. However, the Court does not "assume  
21 the truth of legal conclusions merely because they are cast in the  
22 form of factual allegations." W. Mining Council v. Watt, 643 F.2d  
23 618, 624 (9th Cir. 1981).

24 In the instant action, it appears that Plaintiffs may have a  
25 strong case against Stalt on summary judgment, especially since  
26 many of the arguments Stalt raises in its opposition brief appear  
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1 to lack merit.<sup>7</sup> However, at this stage, entering judgment in favor  
2 of Plaintiffs would be premature. Plaintiffs ask the Court to  
3 infer too much from the pleadings, especially since the Court must  
4 construe the allegations in the light most favorable to the non-  
5 moving party.

6 Plaintiffs rely heavily on the July 12 Letter and the October  
7 Letter, both of which were attached to the Complaint. In these  
8 letters, Stalt informed Plaintiffs that it had placed a Stop Order  
9 on certain VitaminSpice Shares at the request of VitmainSpice.  
10 Stalt has not denied the authenticity or content of these letters.<sup>8</sup>  
11 However, there are only so many inferences the Court may draw from  
12 the documents, especially where those inferences would favor the  
13 moving party. For example, Plaintiffs argue that VitaminSpice  
14 lacked the authority to impose a stop order on their stock  
15 certificates as "the Certificates in question are not titled in its  
16 name, nor has ownership of the Certificates ever been assigned to  
17 [VitaminSpice] via special indorsement." MJP at 10. The Court may  
18 not jump to such conclusions since these facts are not apparent  
19 from the July 12 Letter or the October 7 Letter. Nor are these  
20 facts admitted in Stalt's Answer. The Complaint describes  
21 Plaintiffs' VitaminSpice stock certificates. Compl. ¶¶ 1-2. In  
22 response, Stalt states that it "lacks knowledge or information  
23 sufficient as to form a belief as to the truth or falsity of the  
24 allegations . . . and, therefore denies them." Answer ¶¶ 1-2.  
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26 <sup>7</sup> The Court notes that Stalt's interpretation of the Commerical  
27 Code, as enunciated in its opposition papers, is unpersuasive.

28 <sup>8</sup> In its Answer, Stalt states that the July 12 Letter "speaks for  
itself" and "admits the allegations of paragraph 57 [of the  
Complaint]," which references the October 7 Letter. Answer ¶¶ 39,  
57.

1       The Court also notes that Plaintiffs do not address any of the  
2 six affirmative defenses alleged in Stalt's Answer. The Court  
3 concedes that these affirmative defenses are not particularly well-  
4 pled -- indeed, many do not appear to be affirmative defenses at  
5 all. Nevertheless, "if the defendant raises an affirmative defense  
6 in his answer it will usually bar judgment on the pleadings,"  
7 Seventh-Day Adventists, 887 F.2d at 230, and Plaintiffs have failed  
8 to explain why Stalt's affirmative defenses are defective. The  
9 Court declines to do the work for Plaintiffs, especially on a  
10 dispositive motion that could deprive Stalt of a future opportunity  
11 to plead its case.<sup>9</sup>

12       Accordingly, the Court DENIES Plaintiffs' motion for partial  
13 judgment on the pleadings.

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27       <sup>9</sup> Curiously, Plaintiffs' moving papers devote significant space to  
28 defenses which Stalt might have -- but did not -- raise. MJP at 9-  
16. Equally curious, Stalt fails to address any of its asserted  
affirmative defenses in its opposition papers.

1     **IV. CONCLUSION**

2                   For the reasons set forth above, the Court GRANTS Defendants  
3 Hillard M. Sterling, Esq., and Freeborn & Peters LLP's motion to  
4 dismiss and DISMISSES Plaintiffs Advanced Multilevel Concepts,  
5 Inc., and Able Direct Marketing's claims against these defendants  
6 WITHOUT PREJUDICE. The Freeborn Defendants' motion to strike and  
7 motion for sanctions are DENIED. Further, the Court DENIES  
8 Plaintiffs' motion for partial judgment on the pleadings against  
9 Defendant Stalt, Inc. The Court hereby sets a status conference  
10 for July 6, 2012 at 10:00 a.m. in Courtroom 1, 450 Golden Gate  
11 Avenue, San Francisco, California.

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IT IS SO ORDERED.

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Dated: May 21, 2012

  
UNITED STATES DISTRICT JUDGE

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